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CASE NUMBER: 07-1357

IN THE
SUPREME COURT OF THE
UNITED STATES

DWAYNE L. GILLISPIE
Petitioner
vs.
MARINA CLUB OF TAMPA, HOA, INC.
and
MOHAMMED HUSEIN BHADELIA,
and
MOHAMMED FAROOQ BHADELIA,
and
ABDUL RAZAK,

Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit
Court of Appeals Number: 07-14437

PETITIONER'S REPLY BRIEF

Dwayne L. Gillispie, Pro se
5932 Bruton Road
Plant City, Florida 33565
(813) 458-3353

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INTRODUCTION TO ISSUES AND FACTS

The petition for a Writ of Certiorari as filed is a request for a review of a Restraining Order which was issued against the petitioner by the District Court for the purpose of enforcing a Final Judgment of the United States District Court, Middle District of Florida.

That restraining order was issued by the District Court based upon the Court's jurisdiction and authority contained through the entry of a Final Judgment which incorporated a Court Ordered Mediation Conference Agreement.

The petitioner argued in the District Court and later in the 11th Circuit Appeal that the Mediation Agreement as written could not be enforced under the Condominium Laws (F.S. 718.) of Florida and the laws regulating that Pakistani mortgage and loan agreement which had been entered into in Pakistan.

Petitioner argued in the District Court hearing and in the 11th Circuit Appeal, that the United States District Court had improperly ordered that mediation conference prior to Marina Club ever requesting a Summons be issued by the Clerk of the District Court, and without service by Marina Club of any Summons upon the defendant named by Marina Club in their counter-claim (Abdul Razak), resulting in all Orders of the District Court relating to enforcing that Final Judgment incorporating the terms of that Mediation Settlement Agreement as without legal force and unenforceable.

STANDING

Marina Club for the first time in this litigation is addressing the question of standing of the petitioner.

In fact, Marina Club begins their brief in an effort to degrade the petitioner in their first sentence: "Non-party, pro se petitioner, Dwayne Gillispie", (M.C. Br., pg. 1, line 1) as if this is to tell the Court that the petitioner is not worthy of this Court's consideration.

Petitioner is a disabled person with epilepsy and is accompanied by a large Spanish Mastiff (Dude) that has been specifically trained as a "Service Dog" as defined within the United States ADA and Fair Housing Acts.

When petitioner first approached the Executive Board Members of Marina Club, and advised them of the amendments required in all of the previously filed documents, their first response was to file suit against the petitioner and Husein Bhadelia in an attempt to force the petitioner and his "Service Dog" out of the complex.

Marina Club filed for an injunction in Florida Circuit Court stating that petitioner's "Service Dog" was over the pet weight limit rules of Marina Club and wanted the Court to order the petitioner and the dog off the property.

Petitioner then on March 12, 2002 attended a hearing in the Chambers of the Florida Circuit Court Judge (Honorable Gregory P. Holder) and advised the Court and Marina Club's counsel of record that he was a disabled person and the dog was a service dog protected by the ADA.

Petitioner was advised by Judge Holder that the ADA was a Federal question and he only was interested in the dog's weight. The counsel of record

for Marina Club stated in the hearing in front of Judge Holder, "You (Petitioner) need to get your ass off Marina Club property and find a cure for your illness, and I will personally throw you off and take that "Sand Nigger's" property while I'm at it".

Judge Gregory P. Holder laughed at the comments of the Marina Club counsel of record and then gave the petitioner twenty days to file a written response.

Petitioner did immediately file in the United States District Court a complaint for violation of petitioner's civil rights under the ADA and Fair Housing Acts against Marina Club and named Florida Circuit Court Judge Gregory P. Holder as an additional defendant during the litigation. The United States Marshall served Judge Holder that petitioner's Civil Rights Complaint as the petitioner's written response.

This same Judge Holder is the Judge in the Florida Circuit Court who eventually in that same Florida state litigation issued that summary judgment against Razak superseding the laws of Pakistan with a Florida vague statute of repose.

The original complaint filed by Bhadelia in the United States District Court and the subject of this petition was a complaint against Marina Club for violations of the ADA and Fair Housing Act committed by Marina Club against Bhadelia during Bhadelia supporting petitioner in his exercise of those civil rights of the ADA and Fair Housing Act and later that complaint was amended to request a declaratory judgment to correct the documents of Marina Club which were never properly amended.

Marina Club in a request for the Restraining Order under appeal did not file a new petition or motion for injunctive relief. Instead Marina Club

chose to invoke the original jurisdiction of the United States District Court in the below litigation between Marina Club, Bhadelia, and Razak.

Marina Club chose to name the petitioner as a defendant in that request for a restraining order.

After petitioner has responded under Court order to that request for a restraining order, appeared in District Court as a defendant, and appealed to the 11th Circuit Court of Appeals, Marina Club claims now that the petitioner is a "Non-Party" in this protracted litigation.

A party to a litigation is an entity which has filed the complaint or is named by the plaintiff as a defendant and who is directly affected by any orders or judgments of the court

The petitioner was named by Marina Club as a defendant and is directly affected by that Restraining Order which has restrained the petitioner from performing acts which are not in violation of any laws or written agreements without due process.

The respondent in the hearing in the United States District Court and later in that appeal before the 11th Circuit waived those objections by failing and refusing to address the subject.

In, fact when asked by the District Court as to why the petitioner was named in that request for a Restraining Order, (District Court Hearing, September 7, 2007 Hearing Transcript pg. 30 line 9-10) **THE COURT**: Why does he—(referring to Gillispie) he is not even a party here, is he?" Counsel for the respondent (Ronald Henry Trybus) testified that (Transcript pg. 30 line 11-12) "Well, Your Honor, he's been here since the beginning of time....."referring to the fact that Gillispie was the first one in this litigation sued by Marina Club. .

United States Supreme Court Rules 12(4): Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari.

Petitioner has been wrongfully restrained from acts which but for the deviation of the District Court and the improper Order for a Mediation Conference would not violate any laws or Orders of any Court. For this reason the petitioner is directly and adversely affected by all Orders of the District Court issued after that deviation from the procedures of F.S. 718.110(10) by the District Court.

FAILURE OF MARINA CLUB TO SERVE DEFENDANT ABDUL RAZAK

Respondent does admit to the fact (M.C. Br. pg. 13 lines 6-9) that respondent initially named Razak as a party to its counterclaim.

> Federal Rules of Civil Procedure, Rule 4 **SUMMONS**:
>
> (f) **Service Upon Individuals in a Foreign Country.** Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:
>
> (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or
>
> (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
>
> (A) in the manner prescribed by the law of the foreign country for service in that country in an

action in any of its courts of general jurisdiction, or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court

Marina Club further states (M.C. Br. pg. 13 line 8-9) "it could not perfect service upon him (Razak) because he was at all times a citizen and resident of Pakistan."

That explanation of Marina Club fails to excuse the fact that Marina Club never attempted to perform service upon that defendant. (Razak) The explanation offered by Marina Club totally ignores the fact that Marina Club attached the mortgage and loan agreement as attachment "E" to their counter-claim (District Court Docket item 11 attachment E) and that the name of the law firm representing Razak in Tampa, Florida (Fowler/White) was listed on that attachment.

How then can Marina Club now ask that their failure be excused by the statement that they "could not perfect service on him" when they made no attempt to ever serve a Razak?

How can Marina Club explain the service in the Florida Circuit Court on Razak by Marina Club and the immediate response by Razak attorneys?

FLORIDA STATUTES 718 vs. 720

The importance of the original request for a Declaratory Judgment and questions of law which were required to be answered are now amplified through that mediation agreement and the brief of Marina Club.

Marina Club states that, (M.C. Br. pg. 14) under Florida case law interpreting the applicable Florida Statutes, a homeowner's association, such as Marina Club of Tampa Homeowner's Association, Inc., which might eventually be partially comprised of non-condominium property within the scope of Florida's Condominium Act was not a condominium.

The mediation agreement requires that Bhadelia submit all property deeded to Bhadelia by the Resolution Trust Corporation to condominium ownership.

In that act, as required by the agreement, of submitting all property owned by Bhadelia to condominium ownership there would remain no property within Marina Club Multi-condominium Complex which might eventually be partially comprised of non-condominium property.

Marina Club did specifically state to the 11th Circuit Court of Appeals (M.C. App. Br. Pg. 34) that the purpose of the Marina Club entering into that agreement to purchase Bhadelia property was to eliminate and prevent the possibility of any construction of any non-condominium residences within the Marina Club of Tampa Multi-condominium Complex

Florida Statutes 718.101 et seq requires that a multi-condominium complex which is not comprised of any non-condominium property be operated **only by a Master Condominium Association.** Even

through that argument presented by Marina Club (M.C. Br. pg. 14) it is admitted by and claimed by Marina Club that under F.S. 718 definitions that Marina Club of Tampa Homeowner's Association, Inc. is not a condominium association.

Marina Club of Tampa Homeowner's Association, Inc. would be prohibited by Florida Law from the management and control of that Marina Club Multi-condominium Complex upon submission of Bhadelia property to condominium ownership.

The CRE's designated and addressed within that mediated agreement and that request for a Declaratory Judgment are not a Declaration of Condominium as required under Florida Condominium laws. All of the previously created condominiums within Marina Club have Declarations of Condominium recorded with the Clerk of Hillsborough County, Florida and pay the appropriate fees annually to the Florida Division of Condominiums.

Marina Club of Tampa Homeowner's Association, Inc. does not have a Declaration of Condominium recorded and pays no fees to the Florida Division of Condominiums.

Submission of those present Condominiums and that property submitted by Bhadelia to Master Condominium Association management requires that Florida Statute 718.110 and 718.104 be fully complied with. The statutes require that amended Declarations of Condominium be recorded by each of the four current and the one future Bhadelia condominium which would submit those condominiums to a Master Condominium Association yet to be created under Florida Statute.

That request for a Declaratory Judgment did request that the District Court issue an Order which

would require the Florida Division of Condominiums to oversee all agreements and filing of documents necessary to eliminate this question.

This is a question of laws, rights, and application of appropriate laws and is governed by F.S. 718.110(10). It is not a subject for mediation.

PAKISTAN LOAN AGREEMENT RECORDING OF PUBLIC RECORD

Marina Club (M.C. Br. pg. 16 pr. 1) has contradicted their own previous filings in the District Court. Marina Club did (District Court Docket item # 11, attachment E) attach a copy of that Promissory Note, which is recorded in the Public Records of Hillsborough County, Florida at Public Record Book 7430 pgs 154-165.

That promissory note attached to the counter-claim of Marina Club does state:

Hillsborough County Public Records *Off. Rec. BK 7430 PG 154*

PROMISSORY NOTE

U.S. $1,075,000.00 Made and delivered at **Karachi, Pakistan**

FOR VALUE RECEIVED, the undersigned promises to pay to the order of Abdul Razak, a resident of Karachi, Pakistan referred to as "Holder" the principal sum of U.S. DOLLARS ONE MILLION SEVENTY FIVE THOUSAND ($1,075,000.00) secured by a Mortgage and Security Agreement on certain real property, sometimes referred to as "The Marina Club" and as more specifically described at Exhibit "A" hereto, together with simple interest at the rate of fifteen percent (15%) in Accordance with the following provisions.

During the term hereof, all payments of accrued interest and principal shall be delivered to the Holder outside of the United States at its place of business or directly to the designated financial institution located in

Singapore; said payments to be made payable in accordance with schedule attached as Exhibit "B".

Marina Club states (M.C. Br. pg. 16) that petitioner's argument regarding effect upon International Banking Laws was never presented to a court below. Marina Club further states that the "Pakistani Mortgage" was not recorded in the county where the land is located.

That statement of fact by Marina Club is contradicted by M.C. attaching a certified copy of that loan agreement to the Marina Club counter-claim (D. Ct. Dkt. Item 11)

As stated, above, that Promissory Note was recorded in the public records of Hillsborough County, Florida. The land is located in Hillsborough County, Florida (D.Ct. Dkt item #11 attachment E) Marina Club named Abdul Razak as a defendant in that counter-claim.

That deviation by the District Court in failing to require Razak be served as required under FRCP Rule 4 and prematurely issuance of a Quiet Title has resulted in opinions being issued by Florida 2nd District Court of Appeals which state that Florida Statutes supersede Pakistan laws and International laws on banking.

By Marina Club attaching that non-final opinion and raising the question of the Florida Statute of repose superseding Pakistan law in that appeal, Marina Club brought the subject of Pakistan mortgage laws and International Banking laws into this appeal of the petitioner.

That opinion issued by the Florida 2nd District Court of Appeals, at this time being final, does establish Florida and 11th Circuit Case law which supersedes International Banking laws and the laws

of Pakistan and other Foreign Countries with Florida laws.

FAILURE OF MARINA CLUB TO COMPLY WITH REQUIREMENT OF PAYMENT OF THAT $675,000.00.

Marina Club (M.C. Br. pg. 4 line 3) improperly states that prior to that February 2005 enforcement hearing in District Court had obtained that $675,000. required by the agreement to be paid by Marina Club within 120 days of the entry by the District Court of that Order which incorporated the settlement agreement.

Strangely enough, that statement is contradicted by Marina Club filing in the 11th Circuit Court of Appeals an attached copy of that $1,000,000. line of credit (Objection to Bhadelia request for stay - August 2005) whereby that Line of Credit issued by the bank was not signed until July of 2005 almost five (5) months after that February hearing.

At the September 7, 2007 hearing in District Court, Bhadelia filed an affidavit which stated that Marina Club had never paid that $675,000. required by the agreement as entered in February of 2005.

Since September 7, 2007 Marina Club has made no offer of that $675,000., and has relied upon that premature order of Quiet Title to represent to the Hillsborough County Tax Appraiser and Hillsborough County Tax Collector that Marina Club owns that land which the agreement required it to purchase.

As a result of those false representations by Marina Club to the Hillsborough County Tax Collector, the Circuit Court of Hillsborough County, under motion filed by the Hillsborough County

Collector, relying on that premature Order of Quiet Title issued by the District Court, did grant that motion to void the property taxes assessed on that land for the years of 2005, 2006, and 2007 as Condominium Common areas are not taxed.

That false representation under that premature Order of Quiet Title resulted in a loss to the citizens of Hillsborough County of over $100,000. in tax revenue.

RESTRAINING ORDER UNDER APPEAL

Marina Club's brief argues the validity of a restraining order issued against the petitioner. Those arguments are based upon validity of the underlying litigation and lists much caselaw and citations relating to questions not raised by the petitioner in this petition.

Petitioner's question relates to the Deviation of the District Court prior to the mediation conference.

The questions raised by the petitioner relating to enforceability of this specific mediation agreement were not addressed by the 11th Circuit because of the attachment by Marina Club of that "Non-final" opinion issued by Florida 2nd District Court of Appeals which had superseded Pakistan mortgage laws by a Florida statute of repose which is the deviation of the 11th Circuit.

In petitioner's response to the District Court, and that appeal to the 11th Circuit the petitioner raised the issue that the District Court deviated and did Order a mediation conference before all parties had been properly served.

Petitioner has argued that if the District Court had not deviated from the requirements of a Declaratory Judgment requested as a determination of law and the failure to require that all parties be served with summons that there would have been no mediation conference.

Hence, without a mediation conference, there would have been no mediation agreement, thus there would be no Final Judgment incorporating said agreement to enforce, and there would be no restraining order against the petitioner.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted, this 2nd day of June, 2008

/s/ Dwayne L. Gillispie
Dwayne L. Gillispie, Pro se
5932 Bruton Road
Plant City, Florida 33565
(813) 458-3353

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